

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

ORIGINAL

\* \* \* \* \*  
YARON UNGER \* CIVIL ACTION  
\* NO. 2000-105L  
\*  
VS. \* October 16, 2003  
\* 2:00 p.m.  
\*  
PALESTINE AUTHORITY, \*  
ET AL \* PROVIDENCE, RI  
\* \* \* \* \*

HEARD BEFORE THE HONORABLE RONALD R. LAGUEUX  
DISTRICT JUDGE  
(DEFENDANTS MOTION TO DISMISS)

APPEARANCES:

FOR THE PLAINTIFF: DAVID J. STRACHMAN, ESQ.  
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FOR THE DEFENDANT: RAMSEY CLARK, ESQ. and  
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Court Reporter: Anne M. Clayton, RPR  
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245

1 THE COURT: The matter before the Court is Civil  
2 Action 2000-105L, the Estate of Yaron Ungar and  
3 others versus the Palestine Authority and others.

4 The matter is here on the motion of the  
5 Defendants, the Palestine Authority and the PLO to  
6 dismiss this case under Federal Rule 12(b)1.

7 Will the attorneys identify themselves for  
8 the record.

9 MR. STRACHMAN: David Strachman for the  
10 Plaintiffs.

11 MR. CLARK: Ramsey Clark for the  
12 Defendants.

13 MR. SCHILLING: Lawrence Schilling, your  
14 Honor.

15 MS. CARNEY: Annemarie Carney for the  
16 Defendants.

17 THE COURT: It's the motion of the  
18 Defendants, PA and PLO. So I'll hear from that  
19 side first. Mr. Clark, are you arguing?

20 MR. CLARK: Yes, your Honor.

21 THE COURT: All right.

22 MR. CLARK: Good afternoon. There are a  
23 lot of papers before your Honor on this issue.  
24 And I'll just make a brief summary of the main  
25 points as I see them focusing primarily on the

1 issue of immunity or sovereign immunity among the  
2 several issues in the Motion to Dismiss. And you  
3 would observe at the threshold that the tragedy of  
4 that area over the past at least 55 years, the  
5 absence of peace may flow overwhelmingly from the  
6 disparity between the parties that was contrary to  
7 the intention of the United Nations in 1947.

8 The UN was young. We were all young in  
9 1947, and it undertook what could be called an  
10 important adventure and hope to divide the  
11 Palestine mandate between Palestinian Arabs and  
12 the Jewish population.

13 The Encyclopedia Britannica would tell us  
14 that there were about 650,000 Jews in the area at  
15 the time. They owned about seven percent of the  
16 land. There were a million two Arab Palestinians.  
17 They owned the rest. And the proposal of the UN  
18 was to divide the land into two states, Israel and  
19 Palestine. And for whatever reason, they felt  
20 that 55 percent of the land should go to Israel  
21 and 45 percent to Palestine.

22 Unfortunately, the parties didn't agree.  
23 There was violence, war including neighboring  
24 countries and Israel prevailed. In 1948, it took  
25 possession of 77 percent of the land.

1           The concept, and nothing really has ever  
2 challenged the concept, which has been a reality  
3 in its essential elements was two states. That's  
4 what the United Nations was talking about, and  
5 that's been the struggle all along except the  
6 disadvantage that the Palestinians have been held  
7 to because of their weakness, because of  
8 European/North American support for Israel and  
9 because of their impoverishment. They were  
10 confronted with 750,000 refugees in 1948. Many  
11 have been refugees and refugee status since that  
12 time. Many died in that status.

13           And over the years, the struggle has been  
14 for the full acceptance of what on the ground has  
15 been a fact for the state of Palestine. And  
16 everyone's intention spoken from the beginning has  
17 been the two-state solution.

18           There have been more wars, and the peace  
19 in between was not just a time in between wars.  
20 It was a time of violence as well. Almost  
21 consistent violence.

22           After '67, the six-day war, this expended  
23 it's territory and claimed new acquisitions. In  
24 spite of the UN resolution at that time 181,  
25 Resolution 1947, UN resolution called for the

1 two-state solution, 55/45.

2 1967 in 242, UN Resolution 242, the  
3 prevailing principle was that you cannot acquire  
4 sovereignty over a land by military force.

5 And in fact, I think the only fair  
6 reading, and it's rarely disputed, of Israel's  
7 attitude towards the Palestinian lands that they  
8 had not occupied was that it claimed no  
9 sovereignty over them. Jordan had denied the  
10 sovereignty they once held after the breakup of  
11 the Ottoman Empire. And nature affords a vacuum.

12 And Palestinian peoples in all those years  
13 had the four basic attributes of statehood. They  
14 had a land that was sufficiently definite by any  
15 measure to meet the requirements of U.S. law on  
16 the subject, the Israeli restatement. They had a  
17 population that was undisputed. It was  
18 Palestinian peoples, including the Palestinian  
19 peoples that lived within the territories of the  
20 former Palestine mandate that had been divided  
21 between the two countries.

22 You had a government that was functioning,  
23 if governments ever function. It didn't have all  
24 the facilities that any government would like to  
25 have, and it varied from time to time. But it

1 always had people who were recognized within  
2 Palestine and internationally as the leadership of  
3 those people and that government, and it had  
4 diplomatic relations, the fourth requirement in  
5 the restatement. Not only diplomatic relations,  
6 it had clear ability to conduct diplomatic  
7 relations.

8 Even before 1989 in November when they  
9 affirmed their statehood, the Palestinian National  
10 Council, had more than 70, I think it may have  
11 been 77 nations that recognized them, diplomatic  
12 bilateral relations.

13 After that declaration, which enhanced  
14 their posture as they struggled for the presence  
15 to assert their rights of their people, the  
16 numbers have increased greatly.

17 They have embassies. They're called  
18 embassies. In the last two weeks, I've seen  
19 Ambassador Al-Kidwa who gave the basic affidavit  
20 that includes the documents, considered to be the  
21 basic documents establishing the claim here. I  
22 watch BBC at 11 o'clock at night in New York, and  
23 I would say that Ambassador Al-Kidwa has been on  
24 there one night out of three at least in the  
25 Security Council debating on several issues of

1 great urgency, not only for Palestine but some  
2 other issues. Iraq as well. Or speaking outside  
3 after the meetings. He appears and speaks in the  
4 General Assembly. He's recognized by everyone  
5 there that I'm aware of as Ambassador Al-Kidwa.

6 The United Nations in 1987 changed the  
7 name of the party that it recognized as the  
8 representative of the Palestinian people from the  
9 PLO to Palestine, and they have endeavored and  
10 through the Oslo agreements, and the Y agreements,  
11 and even the road map some little change. We'd  
12 like to call it progress, but with every change  
13 there seems to be death and violence.

14 They have secured greater recognition and  
15 greater rights, if less land. I agree most of  
16 this period, particularly all the time almost  
17 since 1967 there have been intrusions if you want  
18 to call them settlements. Like going out in  
19 Oklahoma territory and settling when there's no  
20 Homestead Act out there. There are no Federal  
21 Land Claims Act out there and staking out some  
22 land and run the Indians off. And they've  
23 consistently developed greater strength, if  
24 greater poverty as well.

25 Today the two peoples who were essentially

1 on a par in 1947, Israeli per capita income is,  
2 according to the Encyclopedia Britannica again, it  
3 varies because sometimes there'll be unemployment  
4 or something, but it's over 15,000 per capita.  
5 Palestinian income is under a thousand, perhaps  
6 way under a thousand now. It may be very much  
7 like Iraq where 70 percent are unemployed, not  
8 doing much. You can't. Like to, but you're just  
9 not able to under the circumstances.

10 Now, the question then is under the  
11 Foreign Sovereign Immunities Act, under the  
12 Federal Anti-terrorism Act 2367 whether Palestine  
13 is a state.

14 THE COURT: It's not Palestine. It's the  
15 Palestinian Authority.

16 MR. CLARK: It's the Palestinian National  
17 Authority. The Palestinian National Authority and  
18 the Palestine Liberation Organization itself --

19 THE COURT: Those are the Defendants in  
20 this case. And you claim that they are foreign  
21 states. And that's the issue that I will decide.

22 MR. CLARK: They have government immunity  
23 as an agency of the Palestine people and the  
24 Palestine government. That's our argument. The  
25 PNA was not a name they chose. It was a name that



1 came out of Oslo. But while it had some  
2 restrictions on it engaging in diplomatic  
3 relations, the PLO has continued and expanded it's  
4 engagement in international relations and the PNA,  
5 of course, is recognized at the United Nations.

6 So the bilateral relations and all, the  
7 growth of government, the sanitation, the lease,  
8 water, in major areas of the West Bank and of  
9 Gaza, they've been an occupied territory without  
10 question. BBC reported last night 40 Israeli  
11 tanks in Rafah, a very small town on the west end  
12 of Gaza Strip on the Egyptian border.

13 But they still have their sovereignty, and  
14 there's no question that an occupied nation  
15 retained their sovereign.

16 The nations occupied by Germany in World  
17 War II retained their sovereignty. When Germany  
18 was defeated, their nation was there. And they  
19 had their state during this period. The state has  
20 been recognized in every way. They're condemned  
21 constantly for not being effective by controlling  
22 by police action, by government police action  
23 terrorism within their own territory.

24 Instead of helping reinforcing their  
25 capacity, they're literally criticized to enforce

1           their laws. They're told in some places like in  
2           this court that they're not a state and they have  
3           no government function, they have no territory,  
4           they have no people, they have no diplomatic  
5           relations when the opposite has been the truth.  
6           And when all the laws that I know of on the  
7           subject of United States cases including  
8           Klinghoffer and the other cases recognize the  
9           restatement as a standard for determining whether  
10          people are a state.

11                       And it's our submission that under that  
12          standard Palestine is a state. And until it is a  
13          state and recognized as a state, there'll be  
14          violence. And if they can come to places like the  
15          United States, be sued and recover for one death  
16          hundreds of millions of dollars that's beyond  
17          their imagination, beyond anything their culture  
18          or economy or society or experience can dream,  
19          when they have far more casualties than Israel  
20          has. No one denies that. Regularly in any given  
21          period of time more Palestinians are dying from  
22          Israeli violence towards them whether it's  
23          reactive or active. It doesn't matter. They're  
24          dying, the Israelis.

25                       And then, you know, the idea of the United

1 States with an imperial judicial power can come in  
2 and impose for a single death hundreds of millions  
3 of dollars that somehow those poor people who are  
4 barely surviving are supposed to pay off is the  
5 reason that they're not happy. It's symbolic of  
6 the reason because it's the nature of the law as  
7 we said to respect the rights of others is peace.  
8 It's hard to get very angry if people are  
9 respecting your rights.

10 That's exactly what hasn't happened with  
11 the Palestinian people, and it's our prayer that  
12 it will happen now.

13 Are there any questions?

14 THE COURT: I have no questions.

15 MR. CLARK: Thank you, sir.

16 THE COURT: Mr. Strachman.

17 MR. STRACHMAN: Good afternoon, your  
18 Honor. I don't know exactly how to respond,  
19 because I think Mr. Clark did not raise much in  
20 the way of legal arguments. His speech or his  
21 presentation was really political. And he did  
22 raise some legal issues in his briefs, and I'd  
23 certainly be interested in touching on the  
24 highlights of our response to that, but his  
25 presentation today is a political speech and has

1 nothing to do with whether under the restatement  
2 the Palestinian Liberation Organization, which our  
3 government and every other rational entity in the  
4 world including the Second Circuit has determined  
5 to be a terrorist organization, whether the PA,  
6 this entity created by the Palestinian Liberation  
7 Organization and the government of Israel is a  
8 state.

9 But none of what he said today has to do  
10 with proving that they are a state under the laws  
11 that courts deal with. And in fact, this position  
12 that was taken just recently, 39 months after this  
13 case was filed we have this third Motion to  
14 Dismiss raising for the first time this statehood  
15 issue, pleading number 177. In other words, after  
16 177 pleadings, we get in June a Motion to Dismiss  
17 suggesting that this terrorist organization and  
18 the sponsor of terrorism is now a state and  
19 therefore they're immune. But all during this  
20 litigation the very same Defendants said the  
21 following to this Court: "The PA today and at all  
22 times relevant has had an undefined juristic  
23 nature. The PA has a 'peculiar status.' The  
24 status of the PA and the PLO today is different  
25 but even more unusual than the unusual status

1 which the PLO had in the 1980's."

2 And those are quotes from a November 27,  
3 2001 brief that the Defendants filed in this case.  
4 They point to nothing that indicates between  
5 November 27, 2001 and June when they filed this  
6 motion that somehow the PLO became a state  
7 fructified into a state or that the PA similarly  
8 had that trans -- had that metamorphous.

9 And in fact, just the opposite has  
10 happened. What we do know is that as we quoted in  
11 our briefs and we quoted in our reply brief or  
12 sur-reply brief the PA's own legal advisors we  
13 quoted in length said the PA and the PLO they're  
14 not states. And that was said very clearly by the  
15 three legal advisors, Mr. Dajani and the two other  
16 ones that we quoted, where they said very clearly  
17 that the accords, for instance, the 1994 Oslo  
18 Accords, none of the constituent documents create  
19 a state. They don't have the attributes of  
20 statehood.

21 And further we find, Judge, that over this  
22 entire period of time there has been no showing to  
23 this Court of any evidence, not political speeches  
24 and rhetoric and dreams and goals, but evidence  
25 before this Court indicating that there is a state

1 here. And in fact, just the opposite. What we  
2 have in the most recent filing of the PLO and the  
3 PA is a 15,000 word article written by a professor  
4 who now backs away from criteria of statehood that  
5 the Second Circuit said was the appropriate  
6 standard, the restatement, Section 201, and that  
7 the PA and the PLO have said in their previous  
8 briefs is the appropriate standard.

9 Now, they file a new brief which attaches  
10 to it a law review article by Professor Quigley  
11 who said we don't need to go by that anymore. The  
12 Supreme Court who said the standard for statehood  
13 is the restatement and all the federal courts who  
14 said the way to determine what a state is is to  
15 look at the restatement and the four attributes of  
16 statehood as defined therein are all by the  
17 waysides.

18 Now, what we need to do is we need to look  
19 at yet another standard which this professor  
20 uniquely on his own came up with as a series of  
21 standards to look at.

22 So even the PA and the PLO are backing  
23 away from what they initially told this Court.  
24 They first told the Court the PA and the PLO was  
25 not a state. They second in June said it was a

1 state because it fits the criteria. Now, in  
2 September, they tell the Court that there's a  
3 whole nother basis for them becoming a state. We  
4 don't have to rely on the restatement. This is an  
5 entity, the PLO is a political organization  
6 similar to al-Qaida. It's a terrorist  
7 organization. It does not control land. It  
8 doesn't control air space, maritime space. It  
9 entered an agreement that said very specifically,  
10 the Oslo Accords, the PA and the entity created by  
11 the PA and the PLO and the Israeli government  
12 cannot, absolutely cannot, and is forbidden to  
13 conduct foreign relations. And that's the key  
14 attribute of statehood under the restatement.

15 It said very clearly it cannot have  
16 absolute control over any of the areas that are  
17 delegated to the PA to exert some level of  
18 control.

19 In fact, even in the 17 percent of the  
20 area called the Palestine Authority that the PA  
21 has the highest level of control, they don't have  
22 absolute level of control.

23 And as we make clear in our briefs, even  
24 that area, area A where they control, have some  
25 modicum of control, over 17 percent of the area,

1 still they're only given the authority that the  
2 Oslo Accords give them. They are not allowed  
3 absolute authority, and that's what their own  
4 legal advisors have indicated, and that's why  
5 their own legal advisors have written law review  
6 articles which we've cited saying the PA is not a  
7 state and the PLO is not a state and we understand  
8 what the obligations of Oslo are, but those  
9 obligations do not create a state.

10 So I find this methodology extremely  
11 disingenuous intellectually as well as  
12 structurally within this litigation. And we'd  
13 urge the Court as we did in our memo when the  
14 Court is ready to rule on this matter that the  
15 Court rule on this in conjunction with our motion  
16 to enter final judgment.

17 The PA and the PLO have been held in  
18 default by Judge Martin. He's currently  
19 considering a motion to enter judgment which your  
20 Honor referred to him. He's had it now for a  
21 month after we wrote a reply and a sur-reply  
22 brief. We expect a decision any day.

23 And in order to preserve the appropriate  
24 logistics of this case, in other words, to avoid  
25 yet another piecemeal appeal to the First Circuit



1 and finally after three and a half years bring  
2 some finality to this, we would ask that your  
3 Honor rule on this motion when your Honor rules on  
4 the motion for entry of judgment so that we don't  
5 have sort of a situation as we had before where  
6 the Defendants tried to take an interlocutory  
7 appeal and where we have this piecemeal situation  
8 where we're proceeding on two levels. And with  
9 that, I'll rest, your Honor, and thank you.

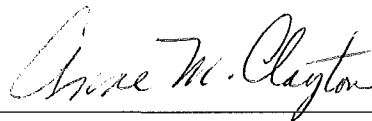
10 THE COURT: Well, I'll take this matter  
11 under advisement and write yet another opinion on  
12 this subject. Take a recess.

13 MR. STRACHMAN: Thank you.

14 (Court adjourned at 3:00 p.m.)  
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C E R T I F I C A T I O N

I, Anne M. Clayton, RPR, do hereby  
certify that the foregoing pages are a true and  
accurate transcription of my stenographic notes in  
the above-entitled case.



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Anne M. Clayton, RPR



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Date